

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service        ) Application No. NUSF-1  
Commission, on its own motion, seeking to        )  
establish guidelines for administration of the        ) PROGRESSION ORDER NO. 18  
Nebraska Universal Service Fund.                    )

### TESTIMONY OF TOM BULLOCK ON BEHALF OF THE RURAL INDEPENDENT COMPANIES

#### I. Introduction - Witness background

Q. PLEASE STATE YOUR NAME, EMPLOYER, BUSINESS ADDRESS AND TELEPHONE NUMBER.

A. My name is Tom Bullock. I am employed with Consortia Consulting f/k/a TELEC Consulting Resources, Inc. ("Consortia"). My business address is 233 South 13<sup>th</sup> Street, Suite 1225, Lincoln, Nebraska 68508. My business telephone number is (402) 441-4315.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am testifying on behalf of the Nebraska Rural Independent Telephone Companies (to be referred to as the "Companies").<sup>1</sup> The Companies provide local exchange and exchange access services predominantly in the more rural parts of Nebraska.

Q. WHAT IS YOUR CURRENT POSITION?

A. I am a Consultant at Consortia, which assists local exchange telephone companies in regulatory analysis and representation, as well as evaluation of financial and operational decisions.

Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AT CONSORTIA?

A. I am responsible for consulting with clients regarding technical and regulatory issues and for analyzing and modeling various kinds of costs related to telecommunications.

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<sup>1</sup> The Companies are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

Q. WHAT WAS YOUR EXPERIENCE PRIOR TO YOUR CURRENT POSITION?

A. Prior to my current position I worked in the telecommunications industry for 19 years. I served at Aliant Communications (later merged with ALLTEL) in its Engineering, Network Operations, Marketing and Information Systems departments, and held a variety of technical and management positions.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I hold a Master of Science degree in physics from the University of Nebraska-Lincoln and a Bachelor of Science degree in physics from the University of Michigan-Ann Arbor. I also attended Nebraska Wesleyan University for two years prior to transferring to the University of Michigan.

**II. Authority of the Nebraska Public Service Commission (the “Commission”) to require providers of interconnected Voice over Internet protocol (“VoIP”) service to contribute to the Nebraska Universal Service Fund (“NUSF”)**

Q. HAVE YOU READ THE SEPTEMBER 26, 2006 ORDER (THE “ORDER”) BY THE COMMISSION IN THIS DOCKET?

A. Yes. The Commission’s Order seeks input on its proposals related to providers of “interconnected VoIP service.”<sup>2</sup>

Q. WHAT PROPOSALS DOES THE COMMISSION MAKE IN THE ORDER?

A. The Commission’s Order contains three proposals. First, the Commission proposes:

(1) to adopt a finding by the FCC that interconnected VoIP providers provide “telecommunications” and are therefore required to contribute to universal service mechanisms, and specifically, to the NUSF.<sup>3</sup>

Second, the Commission proposes:

(2) to apply its definition of “telecommunications service” used in Neb. Admin. Code Title 291, Chapter 10, Section 01.01X, to interconnected VoIP carriers.<sup>4</sup>

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<sup>2</sup> See In the Matter of the Commission on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund, Application No. NUSF-1, Progression Order No. 18, entered September 26, 2006 (the “Order”).

<sup>3</sup> See Order, page 2.

<sup>4</sup> Id., page 3.

Finally, the Commission proposes a requirement:

- (3) that interconnected VoIP providers offering service in Nebraska contribute to the NUSF based on the FCC's safe harbor allocation factor adopted in the Contribution Order.<sup>5</sup>

Q. HOW DOES THE COMMISSION DEFINE "INTERCONNECTED VOIP SERVICE"?

A. The Commission has not formally adopted a definition of "interconnected VoIP service," but the Order refers to the definition adopted by the Federal Communications Commission ("FCC") in its June 3, 2005 order ("FCC 05-116") commonly called the *VoIP 911 Order* – which required providers of such services to supply E911 capabilities to their customers.<sup>6</sup> This definition is codified in Title 47 of the Code of Federal Regulations, Section 9.3, and reads as follows:

An interconnected Voice over Internet protocol (VoIP) service is a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user's location;
- (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.<sup>7</sup>

Q. CAN YOU DESCRIBE INTERNET PROCOTOL, VOIP, AND INTERCONNECTED VOIP SERVICE?

A. Yes. Internet Protocol, or "IP," is the data communications and addressing protocol developed in the late 1970s by the U.S. Department of Defense to facilitate communications among different kinds of computer networks. Its main purpose is to provide a mechanism for delivering, through a series of physical links and routers, variable-sized packets of user data from their point of network entry to their proper destination network and final network exit point, or destination address. The public Internet is the biggest and best known IP network, but there are many other networks besides the public Internet that utilize IP. The public Internet is distinguished from other IP networks by virtue of its being the globally unique collection of interconnected IP networks that deliver and exchange packets in the public IP address space as defined by the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit

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<sup>5</sup> *Id.*, page 3.

<sup>6</sup> See *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, FCC 05-116 (*VoIP 911 Order*), para. 24.

<sup>7</sup> 47 C.F.R. § 9.3.

organization, under the terms of its contract with the U.S. Department of Commerce.

VoIP is the transmission of voice information, or, more precisely, voice-frequency audio information, over an IP network. The IP network in question could be the public Internet, but voice carried over an IP network other than the public Internet is still considered VoIP. With VoIP, audio information is encoded as binary data, placed into packets and sent across the IP network - just as any other data would be sent over the network. At the destination end, the binary data is decoded, or converted back, to audio so it can be heard. Some IP networks, but not the public Internet, are capable of prioritizing the delivery VoIP data packets to minimize end-to-end network delivery delay, in order to maintain the quality of voice conversations.

Interconnected VoIP service, as implied by the FCC's definition, relies on an interconnection between an IP network and the public switched telephone network ("PSTN"). Again, the IP network could be the public Internet, but not necessarily. Some providers have built private IP networks that carry VoIP data packets between end user subscribers and the PSTN, while others use the public Internet to carry VoIP data packets.

Q. THE COMMISSION'S FIRST PROPOSAL REFERS TO A FINDING BY THE FCC THAT INTERCONNECTED VOIP PROVIDERS PROVIDE "TELECOMMUNICATIONS." WHAT IS THE SOURCE OF THIS FINDING BY THE FCC?

A. The FCC made this determination in a June 27, 2006 order ("FCC 06-94") commonly called the *USF Contribution Order*.<sup>8</sup> In the *USF Contribution Order*, the FCC established a requirement that providers of interconnected VoIP service must contribute to federal universal service support mechanisms.<sup>9</sup> In the *USF Contribution Order*, the FCC also amended section 54.5 of its rules to include a definition of the term "interconnected VoIP provider" to be "an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules."<sup>10</sup>

Q. CAN YOU SUMMARIZE THE RATIONALE THE FCC USED TO REACH ITS DECISION THAT INTERCONNECTED VOIP PROVIDERS MUST CONTRIBUTE TO FEDERAL UNIVERSAL SERVICE SUPPORT MECHANISMS?

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<sup>8</sup> See *Universal Service Contribution Methodology*, WC Docket No. 06-122 (other dockets omitted), FCC 06-94 (*USF Contribution Order*).

<sup>9</sup> See *USF Contribution Order*, para. 2.

<sup>10</sup> *Id.*, Appendix A.

- A. Yes. The FCC relied on statutory authority found in two parts of the Telecommunications Act.

The FCC cited the permissive authority granted it in section 254(d) of the Act to require providers of “interstate telecommunications” to “contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>11</sup> The FCC then made the following findings:

1. that interconnected VoIP providers provide “telecommunications,” as that term is defined in federal law,<sup>12</sup>
2. that interconnected VoIP service is a jurisdictionally mixed service in which part of the service is interstate in nature,<sup>13</sup> and
3. that requiring interconnected VoIP providers to contribute to the federal universal service fund (“USF”) is in the public interest.<sup>14</sup>

In addition, the FCC exercised its ancillary jurisdiction under Title I of the Act, citing court cases that have upheld its authority to impose universal service contribution duties, even prior to the enactment of section 254.<sup>15</sup>

- Q. CAN YOU EXPLAIN THE RATIONALE THE FCC USED TO REACH ITS FINDING THAT INTERCONNECTED VOIP PROVIDERS PROVIDE “TELECOMMUNICATIONS”?

- A. Yes. The FCC considered two ways in which interconnected VoIP services involve “transmission,” which the FCC regards as the “heart” of “telecommunications.”<sup>16</sup> First, because interconnected VoIP services, by definition, permit users to receive calls from and terminate calls to the PSTN, interconnected VoIP providers must provide *access to* the PSTN, either by relying on their own facilities or by using others’ facilities, and transmission of user information necessarily occurs over such access facilities.<sup>17</sup> Second, the capability to place and receive calls to and from the PSTN implies that transmission *over* the PSTN is an integral part of interconnected VoIP service. As the FCC succinctly stated:

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<sup>11</sup> *Id.*, para. 38, citing 47 U.S.C. § 254(d).

<sup>12</sup> *Id.*, paras. 39-41.

<sup>13</sup> *Id.*, para. 42.

<sup>14</sup> *Id.*, paras. 43-45.

<sup>15</sup> *Id.*, paras. 46-49.

<sup>16</sup> *Id.*, para. 41.

<sup>17</sup> *Id.*

In contrast to services that merely use the PSTN to supply a finished product to end users, interconnected VoIP supplies PSTN transmission *itself* to end users.<sup>18</sup> (Emphasis in original.)

Q. RETURNING TO THE COMMISSION'S PROPOSALS, CAN YOU COMMENT ON THE FIRST TWO PROPOSALS?

A. Yes. I do not believe the Commission can simply "adopt" the FCC's finding, nor do I believe the FCC's finding directly implies that interconnected VoIP providers must contribute to the NUSF. Nevertheless, I do believe the Commission can rely on reasoning that is similar to that used by the FCC, and I do believe the Commission possesses the statutory authority to require that interconnected VoIP providers offering interconnected VoIP service in Nebraska for a fee must contribute to the NUSF. In fact, I believe Nebraska law directs the Commission to impose such a requirement.

Q. PLEASE EXPLAIN WHY YOU DO NOT BELIEVE THE COMMISSION CAN ADOPT THE FCC'S FINDING THAT INTERCONNECTED VOIP PROVIDERS PROVIDE TELECOMMUNICATIONS.

A. Simply put, I have reached this conclusion because the FCC and the Commission operate under different laws, and under slightly different definitions.

Let's start with the statutory NUSF contribution mandate that the Commission is directed to enforce. Section 86-324(2)(d) of the Nebraska Revised Statutes states that:

[T]he [C]ommission [s]hall require every telecommunications company to contribute to any universal service mechanism established by the [C]ommission pursuant to state law.<sup>19</sup>

Nebraska law allows the Commission no discretion in determining whether to require a "telecommunications company" to contribute to the NUSF. If a company is a "telecommunications company," state law directs the Commission to require that it contribute to the NUSF. This directive is reinforced by the policy principle found in section 86-323(4), which states:

All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;<sup>20</sup>

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<sup>18</sup> *Id.* See also *id.*, note 147.

<sup>19</sup> Neb. Rev. Stat. § 86-324(2)(d).

<sup>20</sup> Neb. Rev. Stat. § 86-323(4).

Since a “telecommunications company” is, according to the applicable Nebraska statutory definition, an entity offering “telecommunications service”<sup>21</sup> these two statutory provisions are coextensive in scope.

In contrast, the FCC’s finding that interconnected VoIP providers provide “telecommunications” allows it to use its section 254(d) permissive authority, in combination with a finding that contribution to the federal USF by interconnected VoIP providers is in the public interest, to impose its requirement that interconnected VoIP providers must contribute to the federal USF.

The Nebraska Legislature has made no such permissive grant of authority to this Commission. The Commission is directed to require every “telecommunications company” to contribute to the NUSF.

The definition of “telecommunications company” that is applicable to matters of NUSF policy is found in Section 86-322<sup>22</sup> which defines “telecommunications company” as follows:

Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association offering telecommunications service for hire in Nebraska intrastate commerce without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the [C]ommission.<sup>23</sup>

Sections 86-319 to 86-322 do not contain a definition of “telecommunications service,” so we must look elsewhere for one. There are two definitions we might turn to, and, fortunately, they are equivalent. Nebraska law defines that term as follows:

Telecommunications service means the offering of telecommunications for a fee.<sup>24</sup>

The Commission has adopted, in its NUSF rules, an equivalent definition:

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<sup>21</sup> See Neb. Rev. Stat. § 86-322.

<sup>22</sup> The definition provided in Section 86-322 is made applicable to matters of NUSF policy by the express provisions of Section 86-318 which read: “For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 86-319 to 86-322 apply.”

<sup>23</sup> Neb. Rev. Stat. § 86-322. Note that Nebraska law contains another, slightly different, definition of this term: “Telecommunications company means any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering telecommunications service in Nebraska intrastate commerce.” (Neb. Rev. Stat. § 86-119.) The definition in § 86-322 is applicable to NUSF matters, however.

<sup>24</sup> Neb. Rev. Stat. § 86-121.

Telecommunications Service: The offering of telecommunications for a fee.<sup>25</sup>

Now we seek an applicable definition of “telecommunications.” Again, the Nebraska Telecommunications Universal Service Fund Act (“NTUSF Act”) contains no definition of that term, so we look elsewhere. State law defines the term thus:

Telecommunications means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received.<sup>26</sup>

Again, the Commission has adopted, in its NUSF rules, an equivalent definition:

Telecommunications: The transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received.<sup>27</sup>

This Nebraska definition of “telecommunications” is quite similar to the federal definition, but they differ in two trivial ways and in one substantive way. The federal definition reads as follows:

The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.<sup>28</sup>

The trivial differences are (1) that the Nebraska definition uses the phrase “without a change” while the federal definition reads “without change,” and (2) that the Nebraska definition refers to “information as sent or received” whereas the federal definition uses “information as sent and received.” These differences in wording do not, in my opinion, change the meaning of the definition at all.

The substantive difference is that, whereas the Nebraska definition uses the term “subscriber,” the federal definition refers to a “user.”

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<sup>25</sup> Neb. Admin. Code Title 291, Ch. 10 § 001.01X.

<sup>26</sup> Neb. Rev. Stat. § 86-117.

<sup>27</sup> Neb. Admin. Code Title 291, Ch. 10 § 001.01V.

<sup>28</sup> 47 U.S.C. § 153(43)

This difference is material because of the way “subscriber” is defined for NUSF purposes. Nebraska law does not define this term, but the NUSF rules contain the following definition:

Subscriber: Any person, firm, partnership, corporation, limited liability company, municipality, cooperative, organization, governmental agency or any other entity provided with telecommunications service by a telecommunications company.<sup>29</sup>

Note that the Commission’s rules define “subscriber” in terms of “telecommunications service,” and in terms of “telecommunications company,” which is, in turn, defined in terms of “telecommunications service.” Therefore, “telecommunications service” is a prerequisite for the existence of a “subscriber.” Without a “telecommunications company” offering “telecommunications service,” there cannot be a “subscriber.”

But note that “telecommunications” is defined in terms of “subscriber.” In other words, if there is no “subscriber,” there is no “telecommunications.”

Consequently, for purposes of NUSF policy, there is no difference between “telecommunications” and “telecommunications service.” Since “telecommunications” requires a “subscriber,” and “subscriber” requires “telecommunications service,” all instances of “telecommunications” require that “telecommunications service” be offered. Even though the definition of “telecommunications service” is “the offering of telecommunications for a fee,” these Nebraska definitions do not allow for an instance where “telecommunications” exists without a fee.

Therefore, “telecommunications” has a meaning for purposes of NUSF policy that differs from its meaning for purposes of federal USF policy.

For these reasons, I do not believe it is appropriate for the Commission, in developing NUSF policy, to simply “adopt” the FCC’s finding that interconnected VoIP providers provide “telecommunications,” without specifying which meaning – Nebraska or federal – is assigned to the term. Nor do I believe the FCC’s finding directly implies that interconnected VoIP providers must contribute to the NUSF.

Q. YOU SAID THAT YOU DO BELIEVE THE COMMISSION CAN RELY ON REASONING THAT IS SIMILAR TO THAT USED BY THE FCC, AND THAT THE COMMISSION POSSESSES THE STATUTORY AUTHORITY TO REQUIRE THAT INTERCONNECTED VOIP PROVIDERS OFFERING INTERCONNECTED VOIP SERVICE IN NEBRASKA FOR A FEE MUST

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<sup>29</sup> Neb. Admin. Code Title 291, Ch. 10 § 001.01S.

CONTRIBUTE TO THE NUSF. CAN YOU EXPLAIN WHY YOU HAVE SO CONCLUDED?

- A. Yes. As I stated earlier, the FCC, in reaching its determination that interconnected VoIP providers provide “telecommunications,” as that term is defined in federal law, considered two ways in which interconnected VoIP services involve transmission of user information. One way is in the transmission of user information *between* an IP network and the PSTN; the other way is in the transmission of user information *over* the PSTN itself.

In Nebraska, we must, ultimately, rely on Nebraska’s definitions of terms such as “telecommunications” and “telecommunications service,” which, as I just explained, allow for no distinction between them once the Commission’s definition of “subscriber” is taken into account. Another key difference between the federal definitional scheme and the Nebraska definitional scheme is that, whereas the federal definitions use the term “user,” Nebraska’s definitions use the term “subscriber” and always involve the payment of a fee by the subscriber.

The line of reasoning I believe is applicable to NUSF policy is as follows:

1. Acknowledge the fact that interconnected VoIP services, by definition, permit users to receive calls from and terminate calls to the PSTN. From this fact, deduce that interconnected VoIP providers must, therefore, provide *access* to the PSTN, either by relying on their own facilities or by using others’ facilities, that transmission of user information necessarily occurs over such access facilities, and that such transmission constitutes “telecommunications” as that term is defined in federal law.
2. Observe that the capability to place and receive calls to and from the PSTN implies that transmission of user information *over* the PSTN is an integral part of interconnected VoIP service, and that such transmission constitutes “telecommunications” as that term is defined in federal law.
3. Define “Nebraska interconnected VoIP provider” as “an interconnected VoIP provider that provides interconnected VoIP service to subscribers in Nebraska for a fee.”
4. Conclude that a “Nebraska interconnected VoIP provider” offers, for a fee, a service that includes the transmission, between or among points specified by the subscriber, of information of the subscriber’s choosing, without a change in the form or content of the information as sent or received,<sup>30</sup> and, therefore, offers a “telecommunications service” as that term is defined in applicable Nebraska law.
5. Adopt the FCC’s determination made in its *Vonage Order* that Vonage’s DigitalVoice is a jurisdictionally mixed service that “enables intrastate communications,”<sup>31</sup> and concur with the FCC’s belief expressed in its *USF*

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<sup>30</sup> Compare with definition of “telecommunications” in Neb. Rev. Stat. § 86-117.

<sup>31</sup> See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267 (*Vonage Order*), para. 18.

*Contribution Order* that “other interconnected VoIP services similarly are jurisdictionally mixed [...]”<sup>32</sup>

6. Conclude that a “Nebraska interconnected VoIP provider” offers a jurisdictionally mixed service that includes telecommunications service for hire in Nebraska intrastate commerce, and is, therefore, a “telecommunications company” as that term is defined in Nebraska law for NUSF purposes.<sup>33</sup>

As I stated earlier, section 86-324(2)(d) of the Nebraska Revised Statutes provides that:

[T]he [C]ommission [s]hall require every telecommunications company to contribute to any universal service mechanism established by the [C]ommission pursuant to state law.<sup>34</sup>

Consequently, Nebraska law directs the Commission to require that every “Nebraska interconnected VoIP provider” contribute to the NUSF.

### **III. Separation of Interstate and Intrastate Revenues**

Q. THE COMMISSION’S THIRD PROPOSAL IS THAT INTERCONNECTED VOIP PROVIDERS OFFERING SERVICE IN NEBRASKA SHOULD CONTRIBUTE TO THE NUSF BASED ON THE FCC’S SAFE HARBOR ALLOCATION FACTOR ADOPTED IN THE CONTRIBUTION ORDER. CAN YOU COMMENT ON THIS PROPOSAL?

A. Yes. It’s important to note that the FCC, in its *USF Contribution Order*, permitted interconnected VoIP providers to choose among three options for separating their interstate and international telecommunications revenues from their intrastate telecommunications revenues. These options are:

- 1) Use the interim safe harbor set in the order (i.e., 64.9% interstate);
- 2) Use actual interstate and intrastate revenues; or
- 3) Use an FCC-approved traffic study.<sup>35</sup>

I believe that the Commission should permit Nebraska interconnected VoIP providers the same freedom of choice, but should require Nebraska interconnected VoIP providers to use the same option for purposes of reporting to the Commission as they have chosen for purposes of reporting to the FCC on Forms 499-A and 499-Q for the same reporting period.

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<sup>32</sup> See *USF Contribution Order*, para. 42.

<sup>33</sup> See Neb. Rev. Stat. § 86-322.

<sup>34</sup> Neb. Rev. Stat. § 86-324(2)(d).

<sup>35</sup> See *USF Contribution Order*, paras. 52-57.

#### IV. Identification of Nebraska Intrastate Revenues

Q. DOES THE COMMISSION'S ORDER ADDRESS THE QUESTION OF HOW TO IDENTIFY THE PORTION OF AN INTERCONNECTED VOIP PROVIDER'S INTRASTATE REVENUES THAT ARE ASSOCIATED WITH A PARTICULAR STATE?

A. No, it doesn't, and I believe that the Commission, if it determines that interconnected VoIP providers offering service in Nebraska must contribute to the NUSF, should simultaneously establish at least one acceptable method for doing so. There are two methods that I believe the Commission should consider.

1) **Registered Location.** The FCC pointed out in its *USF Contribution Order* that interconnected VoIP providers are required to know the location of each customer,<sup>36</sup> by virtue of the "Registered Location Requirement" imposed in the *VoIP 911 Order*.<sup>37</sup> The Registered Location, as defined in paragraph 46 of the *VoIP 911 Order*, is the best indication available of the customer's geographical location at the time he or she places or receives a call using the interconnected VoIP service.

2) **Billing Address.** Because the purpose of the Registered Location Requirement is to ensure that, when a user of interconnected VoIP service dials 911, the recipient of the 911 call also receives location information about the caller, the Registered Location information is chiefly of use within the communications network, and is not necessarily made available to external administrative computer systems where it can be used for revenue analysis. It may be impractical for interconnected VoIP providers to utilize the Registered Location for purposes of identifying the state with which to associate the intrastate portion of its revenue. Furthermore, I believe that the intrastate portion (determined according to the Form 499 separation option chosen) of the provider's revenue collected from subscribers with Nebraska billing addresses is a fair and reasonable estimate of revenue earned from Nebraska intrastate commerce. Therefore, I believe billing address should be a valid option for interconnected VoIP providers to utilize when determining the particular state with which to associate the intrastate portion of its revenues.

#### V. Interim Measures Taken by the FCC

Q. THE FCC HAS DESCRIBED THE ACTIONS TAKEN IN ITS USF CONTRIBUTION ORDER AS "INTERIM" MEASURES. IN YOUR OPINION, DOES THIS SUGGEST THAT THE COMMISSION SHOULD WAIT FOR THE FCC TO TAKE MORE PERMANENT ACTION BEFORE

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<sup>36</sup> *Id.*, note 190.

<sup>37</sup> See *VoIP 911 Order*, para. 46.

PROCEEDING TO REQUIRE INTERCONNECTED VOIP PROVIDERS TO  
CONTRIBUTE TO THE NUSF?

- A. No. The FCC made a number of findings, and took a number of actions, in its *USF Contribution Order*. I think it is fair to say that the FCC described the actions of its *USF Contribution Order* as “interim” because, even though most of its actions in that order serve to modify the FCC’s existing system of revenue-based USF contributions, it remains committed to more fundamental reform of the USF contribution methodology, such as changing to a methodology based on utilization of telephone numbers, or one based on the capacity of connections to a public network.

The leading sentence in paragraph 34 of the FCC’s *USF Contribution Order*, is as follows:

We require providers of “interconnected VoIP services,” as defined by the Commission,<sup>38</sup> to contribute to the federal USF under the existing contribution methodology on an interim basis.<sup>39</sup>

But the footnote accompanying this sentence reads:

To the extent that the Commission adopts another contribution methodology in the future, we expect that interconnected VoIP providers, or the carriers providing VoIP providers their numbers, would be required to contribute under that methodology as well.<sup>40</sup>

Therefore, the FCC’s requirement that interconnected VoIP providers contribute *under the existing revenue-based methodology* is an interim measure, but its requirement that interconnected VoIP providers *contribute* to federal USF mechanisms is not.

Furthermore, there is nothing “interim” about the FCC’s finding that interconnected VoIP providers provide “telecommunications.”<sup>41</sup> Nor is there anything about the FCC’s public interest finding – that requiring interconnected VoIP providers to contribute to the USF is in the public interest – that could be characterized as “interim.” To the contrary, the FCC cites its prior observation

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<sup>38</sup> Cf. *USF Contribution Order*, note 119: “47 C.F.R. § 9.3. See *VoIP 911 Order*, 20 FCC Rcd at 10257-58, para. 24; see also *CALEA First Report and Order*, 20 FCC Rcd at 15008, para. 39.” See *infra*, note 42.

<sup>39</sup> See *USF Contribution Order*, para. 34.

<sup>40</sup> *Id.*, note 120.

<sup>41</sup> *Id.*, paras. 39-41. All three paragraphs are entirely devoid of any reference to “interim,” “provisional,” “temporary,” “pending,” “tentative” or other similar language indicating lack of permanence.

that “interconnected VoIP service is ‘*increasingly* used to replace analog voice service,’”<sup>42</sup> (emphasis added) and concludes:

As the interconnected VoIP service industry continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes *increasingly* inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations.<sup>43</sup> (emphasis added)

Consequently, the FCC’s determination that interconnected VoIP providers *must contribute* to universal service mechanisms is not at all an interim measure. Only the requirement that the *amount* of their contribution should be based on their *revenues* is provisional, pending the outcome of the FCC’s efforts to change from a revenue-based contribution methodology to one based on other metrics.

This Commission has made no formal notice that it is even considering such reform of the NUSF contribution methodology. Therefore, the interim nature of the FCC’s *revenue-based* USF contribution requirement imposed on interconnected VoIP providers has no bearing on this Commission’s consideration of whether to impose an NUSF contribution requirement on interconnected VoIP providers offering service Nebraska.

There is one specific interim action taken by the FCC in the *USF Contribution Order* that merits particular attention by the Commission, however. That is the requirement, discussed in paragraphs 58 and 59 of the *USF Contribution Order*, that “carriers supplying telecommunications services to interconnected VoIP providers who are not themselves carriers should continue to include the revenues derived therefrom in their own contribution bases for two full quarters.”<sup>44</sup> The FCC acknowledges that, as a result of this action, “the Fund may receive contributions from telecommunications revenues associated with the same facilities two times.”<sup>45</sup> Because interconnected VoIP providers providing service in Nebraska to subscribers for a fee may, in turn, purchase telecommunications services from one or more underlying carriers, the question of whether the revenue associated with such services, collected by the underlying carriers, is to be treated as “assessable revenue”<sup>46</sup> for NUSF purposes should also be addressed by the Commission.

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<sup>42</sup> *Id.*, para. 44, citing Communications Assistance for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04-295, RM-10865, “FCC 05-153” (2005) (CALEA First Report and Order), para. 42.

<sup>43</sup> See *USF Contribution Order*, para. 44.

<sup>44</sup> *Id.*, para. 58.

<sup>45</sup> *Id.*, para. 59.

<sup>46</sup> See Neb. Admin. Code Title 291, Ch. 10 § 001.01C, defining “assessable revenue” for NUSF purposes. See also *id.*, § 002.01 for a description of assessable revenue.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.